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TRANSCRIPT OF
MEETING
of
STATE LANDS COMMISSION

SACRAMENTO, CALIFORNIA
JULY 28, 1960 -- 9:00 A.M.

PARTICIPANTS

THE COMMISSION:

Messrs. Alan Cranston, Controller, Chairman
Glenn M. Anderson, Lieutenant Governor
John E. Carr, Director of Finance

Following recess, Lieutenant Governor
Anderson was represented by:

Mr. Don Rose, his Executive Secretary

STATE LANDS DIVISION:

Messrs. F. J. Hortig, Executive Officer
Fred Kreft, Assistant Executive Officer
Kenneth C. Smith, Public Lands Officer

OFFICE OF THE ATTORNEY GENERAL:

Mr. Paul M. Joseph, Deputy Attorney General

APPEARANCES: (In the order of their appearance)

RE: RED ROCK MARINA - Item 2(1) of Summary

Messrs. Rudolf Hess, Division of Highways
Harold R. Farrow, Attorney-at-Law
representing E. N. Kettenhoffen
E. N. Kettenhoffen

RE: WILLIAM KENT ESTATE CO. Item 6 of Summary

Bryan R. McCarthy, Esq. representing
William Kent Estate Co.

RE: MINERAL EXTRACTION LEASES

James Dunham, Division Engineer
Division of Small Craft Harbors
Charles Nichols, Dames and Moore, Engineers

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(IN ACCORDANCE WITH CALENDAR SUMMARY)

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1 GOV. ANDERSON: The meeting of the State Lands
2 Commission will come to order. The first item is the con-
3 firmation of minutes of May 24th.

4 MR. CRANSTON: I move approval.

5 GOV. ANDERSON: It has been moved and seconded --
6 approved without reading. Also, the secretary will take
7 note that all the members are present.

8 At the last meeting I announced that I would be
9 stepping down as Chairman of the Lands Commission today and
10 this was in view of our somewhat stated policy a year ago
11 that we would try to rotate the chairmanship of the Commission,
12 with a new chairman every year, and so at this time I would
13 like to, however it is done, tender my resignation as Chair-
14 man of the State Lands Commission. Is it accepted?

15 MR. CARR: I move the acceptance.

16 GOV. ANDERSON: No objection, it's accepted and
17 I will act as the Acting Chairman, if there is no objection,
18 while we select a new permanent chairman.

19 MR. CARR: Mr. Chairman, I would like to do two
20 things, if you please. I'd like to correct your semantics --
21 you are not stepping down; you are stepping sideways and the
22 question is whether you step from right to left or left to
23 right. So I should say, as my privilege, that I want to
24 nominate Mr. Cranston and I would also like to move the nomi-
25 nations be closed.

26 GOV. ANDERSON: I will second both of your motions.

2
1 If there is no further discussion, it is adopted unanimously;
2 and at this time we will turn the chair over to Mr. Cranston
3 and you can move over here if you wish; and you will note it
4 is going from the left to the right.

5 MR. CRANSTON: Thank you both very much. The
6 second item ~~on~~ our agenda is permits, easements, leases, and
7 rights-of-way issued pursuant to statutes and established
8 rental policies of the Commission. The first is Harley and
9 Mary Austin. Unless there is some comment from the staff or
10 anyone else, I will just name the titles and go on through.

11 MR. HORTIG: Yes sir. The items under sub-item 2
12 are standard and, as noted, are in accordance with standard
13 policy of the Commission and not known to be controversial.

14 MR. CRANSTON: Item (b), Jack Benton; item (c),
15 Leonard Goodwin; item (d), Richard N. Goss; item (e), Kern
16 County Land Company; item (f), C. C. and Rena E. Button
17 Norwood; item (g), Pacific Gas and Electric Company; item (h),
18 Pacific Gas and Electric Company; item (i) Pacific Gas and
19 Electric Company; item (j), Pacific Lighting Gas Supply Com-
20 pany; item (k), Phillips Petroleum Company; item (l), Redrock
21 Marina;

22 MR. CARR: Mr. Chairman, I'd like to ask some ques-
23 tions about Redrock Marina. I understand that this is tide
24 and submerged lands in San Francisco Bay, Contra Costa County.
25 I believe there is someone here from Public Works, isn't there?
26 I wish they would give us a little fill-in on this. The

1 reason is there is quite a bit of interest in San Francisco
 2 and surrounding the Bay concerning the possibilities of
 3 restoring public transportation on a waterborne basis; and if
 4 that is done, terminal facilities and wharves around the Bay
 5 of San Francisco will be important.

6 I think as far as the merits of this particular
 7 application are concerned they are all right. I just have
 8 this one observation. I understand the Redrock Marina operates
 9 a small boat harbor facility and they wish to expand that by
 10 acquiring a lease from Public Works. Who is here from Public
 11 Works? Would you please explain this -- just what this is?
 12 I think we might want to make some sort of reservation. I
 13 believe if they go into waterborne transportation in San
 14 Francisco Bay, I think we might wish to set this up so that
 15 this facility might not be foreclosed.

16 MR. HESS: My name is Hess, Division of Highways,
 17 Public Works. This is a former pier of the Richmond-San Rafael
 18 Ferry. It became a facility we couldn't use. We have been
 19 attempting to dispose of this to relieve the Department of
 20 its obligation for a matter of four years. It has fixed
 21 leases other than this on the State land to the Wells Fargo
 22 Bank. The people going in there are taking over the leases
 23 on assignment which pertain to the location of the pier itself
 24 and the buildings and so forth. The particular lease you have
 25 under consideration is the area lying within the confines of
 26 the pier sections, so that they can utilize that with the pier

1 units. As I say, in four years this is the only real proposi-
 2 tion we have had that we have been able to dispose of our
 3 obligations on this. This amounts to obligations of about
 4 forty-one hundred dollars a year in leases, plus maintenance,
 5 watchmen, and so forth. The leases are fixed for a good time.
 6 I don't know any way to circumvent them other than by leasing
 7 it in this manner.

8 MR. CARR: Do you have any sort of diagram or map
 9 or something of the area, so we can see just what is involved?

10 MR. HESS: Yes sir.

11 MR. CARR: There is a rather wide interest in ex-
 12 ploring this and Senator McAteer and others are having a
 13 meeting shortly to explore this thing, so I think we wouldn't
 14 be wise to dispose irrevocably of anything that might affect
 15 that.

16 MR. HESS: Here are the pier sections (indicating
 17 on map)

18 MR. CARR: Where is the Bay?

19 MR. HESS: Here is the Bay. This is the shoreline;
 20 this is the road....

21 MR. HORTIG: ... to the old Richmond-San Rafael Ferry.

22 MR. CARR: ... which is connected here by existing
 23 roads.

24 MR. HESS: By an easement. This blue section is the
 25 easement that was obtained from the Wells Fargo Bank Company
 26 and their trustees to gain access.

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MR. CARR: Where is the bridge?

MR. HESS: The bridge is way over here.

GOV. ANDERSON: Well, there are roads that are used by people that used to own the ferry.

MR. CARR: What does the State own and what does Wells Fargo own?

MR. HESS: The State owns the section in there. That's the only thing the State has fee to.

MR. CARR: Wells Fargo owns this, and the State leases it?

MR. HORTIG: This is the Division of Public Works' on the upland. You must distinguish from the water line the State of California, under the jurisdiction of the State Lands Commission, owns the tide and submerged lands.

MR. CARR: How much of this is proposed to be leased to Redrock Marina?

MR. HESS: They are proposing leasing from us this entire pier. That would be all the material covered here in color. The thing under consideration here is the intervening area lying right in here, so they can control the docking of boats within that area. (Indicating throughout on map)

MR. CARR: What about the rest of this? This is also probably the State's.

MR. HORTIG: Under lease to Department of Public Works and under this action and approval by the Commission, as proposed today, would be transferred to and assigned to

1 Redrock Marina.

2 MR. CARR: The whole thing?

3 MR. HORTIG: That's right.

4 MR. CARR: Mr. Chairman, I'd like to take this
5 under submission and talk a little bit to the Redrock Marina
6 people and see what they are doing. At the next meeting I
7 think we would know whether there is going to be any conflict.
8 I move we take this under submission until we can explore a
9 little further the possibilities.

10 GOV. ANDERSON: I'll second.

11 MR. CRANSTON: All in favor of taking item (1),
12 Redrock Marina, under submission say "aye." (Unanimous)
13 Unanimously carried.

14 MR. HESS: It is an attempt on our part to dispose
15 of this obligation.

16 MR. CARR: I think it can be disposed of at another
17 time. I think we can at least wait until the next meeting.

18 MR. HORTIG: I believe there may have been a repre-
19 sentative

20 MR. CARR: Is anybody here from Redrock Marina?

21 MR. FARROW: My name is Farrow. I am representing
22 Mr. Kettenhoffen, one of the stockholders of Redrock Marina.
23 I'd like to ask you to reconsider putting this over for
24 another meeting if possible. The investment required is
25 quite substantial already. The hope is and has been for some
26 time that we could get this matter cleared up so we would not

1 have lost the rest of this summer season. There is very
 2 little of it left and the interest of the principal investors
 3 would be wiped out for another year.

4 The idea - - I don't know your name - - someone
 5 suggested the possibility it might be useful to have this
 6 available later for public transportation. Of course, it
 7 would always be available, just as it was available when the
 8 State wanted it for the Richmond-San Rafael Ferry, to take it
 9 by condemnation.

10 We would like to see the Commission go ahead with
 11 this today. We are prepared to discuss all aspects of it. I
 12 have proposed plans and all the leases are available.

13 MR. CARR: You spoke of considerable investment.
 14 Do you propose extensive improvements in the area? What is
 15 the proposal?

16 MR. FARROW: The proposal, as I understand it now,
 17 is to take this existing rather long pier with several ferry
 18 slips into it and develop the whole area into a small boat
 19 harbor. That would be to build the necessary bulkheads and
 20 what have you for small boats, and to improve all existing
 21 structures of the building; put in retail stores -- boat and
 22 tackle shops, things of this nature; a restaurant, I believe,
 23 would be one of the proposals; in other words, to make some-
 24 thing of a feasible recreation area of what is now and has
 25 been for a good number of years a slowly eroding installation.

26 MR. GRANSTON: What is your own time schedule on

1 development?

2 MR. CARR: We don't want to put you to any loss.

3 MR. FARROW: Of course, we have anticipated. We
4 have, of course, already made arrangements to have our assign-
5 ment of leases from the Department of Public Works and the
6 particular thing we are here today on is just a lease of a
7 piece of open water next to the existing facilities. We
8 already have an advertising schedule on this thing and are
9 trying to get our tenants lined up and contracts signed up
10 with the oil companies and for the restaurant building.

11 MR. CARR: There are some pictures here. Would
12 you care to come up here and point out just what your plans
13 are?

14 MR. FARROW: If you don't mind, Mr. Chairman.

15 MR. CARR: This is the area you are proposing to
16 develop now? (Indicating)

17 MR. FARROW: This area.

18 MR. CARR: Mr. Hess indicated this here, but this
19 is the old ferry. Now, is this a fill or something in here
20 existing? Is this a new fill or

21 (Conversations over maps and pictures are not
22 complete, as parts were inaudible to reporter)

23 MR. KETTENHOFFEN: The brown is the leases that were
24 condemned from the ferry transportation company.

25 MR. CARR: The permanent structure is this much?

26 MR. KETTENHOFFEN: That's right. We will build a

1 breakwater right here and put finger piers in there.

2 MR. FARROW: May I point out the color merely indi-
3 cates the area.

4 MR. CARR: There is a ferry slip apparently here,
5 and apparently there is one out here further, is that right?

6 MR. KETTENHOFFEN: We have been in negotiation for six
7 months and it is going to be rather drastic to get out.

8 MR. CARR: How much of an investment is there?

9 MR. KETTENHOFFEN: I'd say eventually probably over
10 two hundred thousand dollars. We are planning on the first
11 phase fifty thousand dollars.

12 MR. CARR: And the proposed rent is eighteen
13 hundred a year? That is quite a bargain.

14 MR. HESS: Well, the existing obligations now are
15 eighteen hundred a year. In addition, Redrock propose to
16 lease this portion at the same rate per square acre as this
17 land here was rented.

18 MR. HORTIG: The total rental is larger than that.

19 MR. KETTENHOFFEN: It would be about four or five
20 thousand dollars a year. It is my understanding the State
21 Lands Commission is leasing only the ground under fifteen feet
22 of water. The improvements were condemned.

23 MR. CARR: Who owns this?

24 MR. KETTENHOFFEN: We will own it.

25 MR. CARR: Is this an outright purchase or is this
26 a lease?

1 MR. KETTENHOFFEN: No, this is a lease.

2 MR. CARR: And who are you leasing it from?

3 MR. KETTENHOFFEN: We are taking it over from the
4 Wells Fargo Bank.

5 MR. CARR: Do the Wells Fargo Bank own it?

6 MR. KETTENHOFFEN: They own the land, the upland.

7 MR. HESS: Perhaps I can straighten it out. The
8 only thing that the State has fee to is this little strip
9 here and the State Lands Commission

10 GOV. ANDERSON: We also have the ownership of the
11 leases because we condemned this when we took this over for
12 building the bridge, we took over the ferry.

13 MR. HESS: These leases are all assigned to the
14 Department of Public Works and what has been proposed and
15 has been done so far and what you see in color here is an
16 assignment of the lease-interest of the Department of Public
17 Works and the only thing Redrock Marina wants is this little
18 tiny piece over here.

19 MR. CARR: What are they paying for that?

20 MR. HESS: They are taking the obligation of paying
21 the rent for some twenty-odd years at the rate of seventeen
22 hundred a year.

23 MR. CARR: And this has been thrown in?

24 MR. HESS: And this little piece of land is thrown in.

25 MR. CARR: And that little piece of land is how
26 big -- 100 feet by 642?

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MR. HESS: Under about fifteen feet of water.

MR. CARR: No, I wouldn't approve this today. You are in business now over there, are you?

MR. FARROW: No, we can't

MR. CARR: Don't you have some other facilities there that you are presently operating?

MR. FARROW: No. There has been a considerable amount of money spent in preparing this.

MR. CARR: I am not in favor of this, are you?

MR. CRANSTON: You know more about this than I do.

MR. FARROW: It, of course, has been looked into by the Department of Public Works.

MR. CARR: Well, it hasn't by the State Lands Commission, apparently.

MR. CRANSTON: Frank, you are handling this. Do you have any knowledge of this?

MR. HORTIG: No sir. The staff recommendation, of course, is predicated upon the Department of Public Works' request that they be relieved of this obligation by having an assignee to whom they propose to assign.

MR. CARR: Public Works is paying how much?

MR. HORTIG: \$1870.36. They have requested approval to assign the lease. The fact that they had a potential customer, an assignee; the fact that the project has not brought forth any recommendations by Small Craft Harbors Commission -- to that extent the staff recommendation

1 was that the Commission approve these assignments. The
2 specific objections raised by Director Carr are over and
3 beyond anything that the staff has reviewed or could possibly
4 recommend on.

5 MR. CARR: Do I read this correctly that this is
6 100.0 feet -- 100 by 642?

7 MR. HESS: I might add that Mr. Tooker of the Los
8 Angeles office came up before this was reviewed and appraised
9 it.

10 MR. KETTENHOFFEN: Yes, I think if I interrupted a
11 moment, the true position here today is to approve assignment
12 of the leases in effect and the new lease. The only thing in
13 issue today is the brown and this little spot here.

14 MR. CARR: (Indicating on map) What has this to
15 do with it?

16 MR. FARROW: That has nothing to do with it. That
17 is a fee title in the Department of Public Works.

18 MR. CARR: I thought somebody just told me this was
19 taken in as a bonus.

20 MR. FARROW: It doesn't affect the State Lands Commis-
21 sion.

22 MR. KETTENHOFFEN: That's a separate piece of property

23 MR. FARROW: ... and over which the State Lands Com-
24 mission has no interest at all of any sort.

25 MR. HORTIG: That is technically correct from the
26 title standpoint and it is solely under the disposition of the

1 Department of Public Works.

2 MR. CARR: Where is the shoreline?

3 MR. HESS: The shoreline is over here.

4 MR. CRANSTON: Which is the parcel on which the
5 rental would be \$1870?

6 (This was pointed out on map)

7 MR. CARR: You just stated the only thing that was
8 involved in this \$1800 rental is the white area that appears
9 to be water. Is it true you also get these piers?

10 MR. KETTENHOFFEN: That is under a different rental.

11 MR. FARROW: Under this assignment from the Department
12 of Public Works we will now pay the rent on this area. Right
13 now the Department of Public Works itself have been renting
14 this. We will now pay that if we assume the assignment, by
15 paying \$1700 a year. In addition, we would like this addition
16 from the State Lands Commission at \$264 per acre a year.

17 MR. HORTIG: Well, that's the total rental, isn't it?

18 MR. KREFT: \$264.55 per acre.

19 MR. CARR: We have a long agenda. I would move we
20 set this over one meeting or we set it over to the end of the
21 agenda and see if we have time.

22 MR. CRANSTON: Yes, you can move to bring it up at
23 the end of the agenda if you wish.

24 Item (m), Shell Oil Company; item (n), Lindsey
25 Spight, doing business as Diablo Communications Center....

26 MR. HORTIG: Mr. Chairman, might we refer back to

1 item (m) for a supplemental report? You went by there rather
 2 rapidly. The noted counties offshore from which the proposed
 3 submarine geophysical exploration would be conducted, all
 4 noted counties, were notified of the pendency of this request
 5 and statements of nonobjection to the conduct of such opera-
 6 tion have been received from Marin, Mendocino, Monterey,
 7 Santa Cruz, and San Luis Obispo. The receipt of the notice
 8 was acknowledged by the County of San Francisco without any
 9 comment; and Santa Barbara similarly noted receipt of the
 10 notice, did not offer any objections, asked for additional
 11 specific descriptions where operation is to be performed and
 12 this has been furnished to the County of Santa Barbara.

13 In other words, we have not been in receipt of a
 14 single objection to this operation from any of the counties
 15 listed in this item.

16 GOV. ANDERSON: There is no one that has made any
 17 objection to this and they all knew this was coming up?

18 MR. HORTIG: Yes sir.

19 MR. CRANSTON: And, finally, we have Linsey
 20 Spight. That concludes the items under number 2 and a
 21 motion is in order to approve all with the exception of (1).

22 GOV. ANDERSON: I'll move all the items with the
 23 exception of item (1), Redrock Marina.

24 MR. CARR: I'd like to ask a question before we
 25 vote, Mr. Chairman. On (n) and (o), what is involved in the
 26 lease for the operation of mobile transmission and receiving

1 station? If it's mobile, why do they need a lease?

2 MR. HORTIG: Possibly a stenographic translation
3 for the desirability of placing on Mt. Diablo a fixed station
4 in conjunction with mobile field units.

5 MR. CARR: Would this tie in with existing opera-
6 tions on Mt. Diablo?

7 MR. HORTIG: Yes, and also operations on each of
8 these have been cleared by the Division of Communications of
9 your Department of Finance.

10 MR. CARR: I am familiar with the fixed installa-
11 tions up there but I was wondering about the "mobile."

12 MR. HORTIG: This is simply a base station under
13 an existing lease to service other mobile equipment in the
14 field.

15 MR. CARR: I second the motion.

16 MR. CRANSTON: All in favor say "aye." (Unanimous)
17 Opposed, none. Unanimous.

18 We go then to Item 3 -- City of Long Beach projects.
19 Item (a) -- Addition No. 1 to Roads and Streets project;
20 (1) Pico Avenue, second phase. Is there any comment on that?

21 MR. HORTIG: As the Commission will recognize be-
22 cause of the reference to "second phase" on both items (1)
23 and (2) now being considered, this necessarily means the
24 requisite advance approval to actually get into operations
25 on projects for which the Commission has previously given
26 advance approvals for the necessary preliminary study, bid

1 preparation work, and so forth. The items herein estimated
2 as necessary to complete the projects are again being requested
3 to be approved, subject to the standard conditions that the
4 amount of subsidence cost ultimately to be allowed will be
5 determined by the Commission upon an engineering review and
6 final audit subsequent to the time when the work under any
7 of these items is actually completed.

8 MR. CARR: Did anybody hear from Long Beach object-
9 ing to the approval of these? (Laughter)

10 MR. CRANSTON: Does anyone wish to be heard in
11 opposition to these items? (No response) Apparently not.

12 MR. CARR: I move approval.

13 GOV. ANDERSON: Second.

14 MR. CRANSTON: Without objection, unanimously
15 approved. So ordered.

16 Item 4 is authorization for Executive Officer to
17 give advance consent to agreement amending and supplementing
18 contracts for sale of natural gas between Board of Harbor
19 Commissioners of the City of Long Beach and Lomita-Signal-
20 Wilmington Associates, Fault Blocks II and III, Wilmington
21 Oil Field.

22 MR. HORTIG: As the Commissioners will recall,
23 Fault Blocks II and III have been through a series of contrac-
24 tual agreements approved by the Lands Commission insofar as
25 required under Chapter 29 of the Statutes of 1936 -- first, a
26 series of cooperative agreements under which operations were

27

1 initiated in Fault Blocks II and III for pressure restoration
2 which agreements were superseded by unit agreements for unit
3 operation of Fault Blocks II and III, which were also approved
4 by the Lands Commission; and the net result of these contractual
5 changes has been the requirement that there be amendments to
6 the natural gas purchase contracts in existence for delivery,
7 or covering delivery of natural gas from Fault Blocks II and
8 II because delivery simply cannot be conducted precisely in
9 the manner originally contemplated in the contract prior to
10 the time there was a unit plan for operating the field.

11 The proposals to amend and the necessity for the
12 amendment have been reviewed by the staff and the office of
13 the Attorney General has advised that the Commission may
14 approve these amendments in its discretion and give its
15 advance consent to this amendatory agreement; and, therefore,
16 it is recommended that the Commission authorize the approval
17 of the cited natural gas purchase contracts between Long
18 Beach Oil Development Company - - involving operations of
19 the Long Beach Oil Development Company and also involving the
20 Board of Harbor Commissioners and the Lomita-Signal-Wilmington
21 Associates, who are the actual purchasers of the gas when
22 delivered. There are no objections.

23 MR. GRANSTON: Without objection, unanimously
24 approved.

25 (Gov. Anderson left the meeting for a short time
26 at this point)

1 MR. CRANSTON: Item 5 -- approval of entry into
2 unit agreement and unit operating agreement, Fault Block II,
3 Wilmington Oil Field, by City of Los Angeles Harbor Department
4 and in behalf of the State pursuant to Section 7060(b) of the
5 Public Resources Code.

6 MR. HORTIG: Again, as a supplement to your necess-
7 ary condition of completing the entire program for unit opera-
8 tions in Fault Blocks II and III-- which the Commission by
9 the approval of the previous item has completed all the necess-
10 ary approvals as required on behalf of the City of Long Beach
11 and its contractors -- the operation of Fault Blocks II and
12 III also exists within the city limits of Los Angeles and we
13 have here before the Commission a recommendation that the Com-
14 mission approve in a similar manner and for identical purposes,
15 on behalf of the area within the City of Los Angeles, the unit
16 agreement and unit operating agreement for Fault Block II --
17 excuse me, I misspoke earlier and included Fault Block III
18 in this discussion; it should have been restricted to Fault
19 Block II -- relating to that portion in the City of Los
20 Angeles in the identical manner which has been approved for
21 the City of Long Beach operation before.

22 MR. CARR: Move approval.

23 MR. CRANSTON: It has been moved by Mr. Carr and
24 seconded by myself, and so ordered.

25 Item 6 -- authorization for Executive Officer to
26 request Office of Attorney General to take necessary legal

1 action to reconfirm the boundary line between State-owned
2 tidelands and the Kent Estate on the ocean side of the
3 Bolinas Sandspit, Marin County.

4 MR. HORTIG: Mr. Chairman, I believe for the sake
5 of being certain that all understand the elements involved
6 here, I should summarize that basically the problems involved
7 with respect to the boundaries of the Bolinas Sandspit are
8 questions that are of particular local interest. Because of
9 that local interest and the fact that there is existing on
10 the beach a fence, which is contended to be a public nuisance
11 by some people and, of course, exactly the converse by the
12 people who erected the fence, we understand that the District
13 Attorney of Marin County has been ordered by the Board of
14 Supervisors to abate this fence as a public nuisance.

15 Strictly, legally and also hypertechnically, the
16 fence constitutes a trespass on State lands of the State,
17 but the fact as to whether or not it is an objectionable one
18 as such is primarily a local problem.

19 In connection with the proposal to abate this fence
20 as a public nuisance in Marin County, we have been informed
21 by the owners of the said fence, the William Kent Estate,
22 that the contention would be made that the fence is not, in
23 fact, on public lands and is on privately owned lands of the
24 Kent Estate Company. Therefore, following conferences with
25 representatives of the William Kent Estate Company, the
26 District Attorney of Marin County, and complete review by the

1 office of the Attorney General, the office of the Attorney
2 General indicated that, in the event the State's title to
3 these particular lands was to be questioned in an action
4 brought by the District Attorney of Marin County, it appeared
5 preferable that the State be represented in order that the
6 court could be fully informed as to the State records and the
7 State's legal contention as to the ownership of the property;
8 and, therefore, it is recommended that the Commission author-
9 ize the Executive Officer to request the office of the Attorney
10 General to take whatever legal action is necessary to reconfirm
11 the boundary line between State-owned tidelands and the Kent
12 Estate on the ocean side of the Bolinas Sandspit at the
13 ordinary high water mark if such action is necessary as the
14 result of the legal proceedings proposed by the District
15 Attorney of Marin County to have the William Kent Estate Co.
16 remove that portion of the fence erected waterward of the
17 present ordinary high water mark.

18 Mr. McCarthy is here this morning representing the
19 Kent Estate Co.

20 MR. McCARTHY: Mr. Chairman and members of the Com-
21 mission - I assume it is satisfactory to remain seated, is
22 that correct? - - I do believe there are certain facts (I am
23 not here to argue law) that this Commission should know before
24 it takes any action, particularly the one requested by the
25 Executive Officer. Now, I conservatively estimate that if I
26 would have the permission it would take approximately fifteen

1 minutes to present this information. If you prefer to put
2 it later on your agenda, I am here all day. If that would
3 suit your schedule, I would do it. Otherwise, I am ready to
4 proceed at this time.

5 MR. CRANSTON: Are you opposed to this action?

6 MR. McCARTHY: Very vigorously opposed.

7 MR. CRANSTON: We should proceed at this time.

8 MR. McCARTHY: I am here - - Bryan McCarthy of
9 San Rafael - - on behalf of the William Kent Estate Company,
10 the owners of a portion of the Bolinas Sandspit. I believe
11 that in matters of business, in matters of profession,
12 integrity is very important and I think we will all agree
13 that you can't operate without integrity. That's a nice
14 general word. What am I talking about specifically? Well,
15 the word I am meaning is as defined by Webster's International
16 Dictionary. He defines integrity as "strictness in the ful-
17 fillment of contracts."

18 You may ask "What is the relevancy to the problem
19 before us?" It's very simple. I believe that you are being
20 asked to break a written agreement of the State of California
21 and I believe that if integrity in keeping contracts is vital
22 to individuals, how much more vital is integrity for the State
23 of California? Now, this is an unusual situation in that
24 there is no dispute on the facts. Many times I think you
25 will have matters before you where there is controversy. There
26 is none here. A little of the basic history: This is the end

1 -- the last mile of the Bolinas Sandspit, which I think runs
2 for approximately five miles. It's a long beach that ends in
3 a spit -- that is, a junction that goes into a lagoon. It's
4 on the south side of Mt. Tamalpais on Stinson Beach. This is
5 the northwesterly end of the Estate area. The Estate owned
6 this property, owned almost all of the beach which is the
7 State Park, since 1910 and there had been developments over
8 all the years, until eventually the State purchased part of
9 the land, developed part of it.

10 The Estate proposed to build a subdivision. To
11 that end, in the year 1947 there commenced negotiations and
12 correspondence with officers of the State Lands Commission
13 concerning this proposed subdivision. I would just like you
14 to hear brief excerpts of some of the correspondence that was
15 involved, so you will have the facts I think you should know
16 before you act.

17 The first correspondence is in a letter from the
18 Kents to the State Lands Commission and it is dated April 5,
19 1948 and states as follows:

20 "The undersigned, the William Kent Estate Company,
21 is now proceeding to develop the sandspit at
22 Stinson Beach, which is included in the above
23 survey. In connection therewith we have already
24 done certain work to stabilize the ocean frontage
25 and we have constructed 3,000 feet of roadway on
26 the sandspit immediately west of the so-called
Upton tract. Accordingly, it would appear to be
both to the interest of the State of California
and the undersigned that the dividing line between
the ownership of the State and private ownership
be established....."

a very plain request that the dividing line be decided.

1 In April 1948, Mr. R. C. Hunter, Executive Officer
2 of the State Lands Commission wrote back a long letter:

3 "In reply to your letter of April 5, 1948, the
4 State Lands Commission is authorized by Section
5 6357 of the Public Resources Code to establish
by arbitration with the upland owner the ordinary
high water mark of the Bolinas Sandspit...."

6 On May 7th, the Kent Estate Company write back to
7 the State Lands Commission and it says in part:

8 "... However, if it is necessary to have the
9 high water mark of the Pacific Ocean arbitrated
10 to obtain an approval of a resurvey under Section
7951-7958, we will be willing to assume the
expense of such survey...."

11 So now the Kents and the State are talking about a resurvey
12 to establish that line.

13 On June 4, 1948, Mr. Hunter of the State Lands Com-
14 mission wrote to the William Kent Estate Company:

15 "In connection with your letter of May 7, 1948,
16 our engineer has recently contacted Mr. John
17 Oglesby of San Rafael and it was their conclusion
18 that resurveys of the tidelands surveys which you
19 own, combined with a survey of the ordinary high
20 water mark along the oceanward side of the sandspit
would provide the best means of fixing the common
boundaries between the land owned by the William
Kent Estate Company and those of the State of
California.

21 We believe (this is Mr. Hunter talking) the best
22 method to follow would be for this division to
23 survey the ordinary high water mark along the
Pacific Ocean setting in adequate control points
to which Mr. Oglesby could tie the resurveys of
the tidelands surveys...."

24 Mr. Kent is told by the State "Let's make a survey; let's tie
25 down the ordinary high water mark."

26 On June 7, 1948, the William Kent Estate Company

1 wrote to the State Lands Commission:

2 "This will acknowledge with thanks your letter
3 of June 4th with its advice that your engineer
4 has contacted Mr. John C. Oglesby of San Rafael
5 and that it is their conclusion that resurveys
6 of our tidelands combined with a survey of the
7 ordinary high water mark along the oceanward
8 side of the sandspit will provide the best means
9 of fixing the common boundaries between the land
10 owned by William Kent Estate Company and those
11 of the State of California."

12 On July 15th in '49, Rufus Putnam, Executive Officer
13 of the State Lands Commission, again wrote to the Kent Company
14 and said in part - - and this is two of the concluding para-
15 graphs from the Executive Officer:

16 "If Senator Keating's bill is signed by the
17 Governor, we understand you will institute
18 quiet title action on the uplands of the
19 Bolinas sandspit. This contemplated court
20 action could accomplish the permanent estab-
21 lishment of the water boundaries of the sand-
22 spit...." (on the oceanward side)

23 "The ordinary high water mark along the ocean
24 could be established by arbitration under
25 Section 6357 of the Public Resources Code
26 if your attorneys do not believe the procedure
outlined in the last paragraph are not adequate."

27 This is the part of importance in this correspond-
28 ence. To me, those two letters mean exactly what they say
29 very clearly -- that there were negotiations, agreement and
30 a survey. The surveyor was hired by the State of California,
31 Mr. Atherton; and Mr. Atherton proceeded to prepare a survey
32 of the sandspit and I have before me a December 1948 draft,
33 finalized shortly thereafter. The line on the lower part of
34 this is the ocean side of the spit. This is a little lagoon.

1 This is the sandspit, and over in this direction is the State
2 park (indicating on map). You will note this engineering
3 survey of your own engineer sets forth metes and bounds along
4 the beach.

5 After this was prepared, the Kents paid their por-
6 tion, some two thousand dollars, for this survey. They, in
7 conformance with the correspondence, filed a quiet title suit
8 on this description prepared by your engineer. It went to
9 the Marin County Superior Court, in which the State of Cali-
10 fornia appeared, and there was a decree of quiet title; and
11 that quiet title was along the line set forth -- not along
12 just where the high water mark is -- specific metes and bounds
13 in accordance with every word of this correspondence.

14 The Kents went ahead and subdivided this land. You
15 see the brochure. It's called Seadrift Subdivision and,
16 incidentally, a very fine subdivision, very fine houses. In
17 the back of this brochure is set forth the lots and the way
18 they are shown is metes and bounds description, and they used
19 the Atherton survey. They do not show this line as being
20 wherever the high water mark is along the ocean. They take
21 it in feet. These lots have been sold, many of them -- for
22 the most part, all of them according to this map, in reliance
23 upon the action of the State Lands Commission and in reliance
24 upon the decree of the Marin County Superior Court. Not only
25 that, but a title company in San Francisco guaranteed title
26 and I have the title policy with me, a sample of one. The

1 Western Title Insurance Company has guaranteed title as set
2 forth in this litigation, on this line. So you can see the
3 complete reliance, not only of the Kents, not only of the
4 buyers of over a hundred lots at this time, but of the title
5 company, reliance on an agreement and a decree.

6 Now you are asked here to ignore it and say "No,
7 we didn't mean what we said. We didn't mean what we did"
8 and in plain, simple language there is nothing else that you
9 are asked to do but that.

10 Now, you might ask yourself - - that to me is the
11 very point before you - - you might ask some practical ques-
12 tions that may be in your mind. Is this of vital interest to
13 anybody? No -- this is a long beach. The State Park is
14 several miles away, so there is several miles of State beach
15 open to the public, some of it owned by the State, some of it
16 not. There is other private ownership along this beach.

17 You are told in the request by the Executive Officer
18 that this fence restricts the public from entering and walking
19 along the beach. I would like to show you two pictures of
20 this fence and I might tell you the distance between these
21 poles which you will see in these pictures is approximately
22 four to six feet. You might say "That is an unusual fence"
23 and it is an unusual fence. Those are railroad tracks driven
24 vertically in the sand. Why did the Kents see fit to put up
25 this fence? Starting in the early part of 1950 it became a
26 hobby of only a few residents of this general area to drive

1 no-called beach buggies up and down this beach, which are cut
 2 down frames with big tires, for purposes of scenery, for pur-
 3 poses at times of dumping garbage -- at times causing a
 4 nuisance. That is why this big fence was placed there. It
 5 does not stop people from walking through. You can walk
 6 through at six feet. It does not stop navigation because the
 7 poles run vertically into the ocean and no one would boat on
 8 this beach except in a lifesaving effort.

9 It is true there are signs saying "no trespassing."
 10 All it says is there is no trespassing. The property is
 11 private property in accordance with the Lands Commission
 12 agreement and the Superior Court decree.

13 Now, I ask this one last question in this matter.
 14 You are asked to join the District Attorney of Marin County
 15 or go ahead yourselves and institute action to force this
 16 fence to be taken down -- and, incidentally, we have been
 17 told by the Executive Officer in letters that you don't own
 18 that land because now the beach is changed and you don't own
 19 where the fence is, so the title has been questioned. Now,
 20 I would like to ask one question.

21 It has been told you the Board of Supervisors told
 22 the District Attorney to abate this. I must state this is
 23 not a correct statement according to my understanding. As I
 24 understand it, the District Attorney of Marin County, because
 25 the people who were running these beach buggies who were mad
 26 because this fence was up went to the District Attorney, went

2
1 in turn to the Board of Supervisors and asked them "If I do
2 decide to institute proceedings, if I go ahead, can I look
3 to the county for costs?" and they approved that. I might
4 state there was no opposition to that because there was no
5 publicity that he was going to the Board of Supervisors. No
6 one knew he was going to the Board of Supervisors. He has
7 taken it upon himself. No formal action has been taken on
8 the part of Marin County other than the fact he may look to
9 the county for costs if the District Attorney has decided to
10 do it.

11 He hasn't made an agreement with the Kent Estate.
12 You have made a solemn agreement. I ask you the last question:
13 If, as contended now by the Executive Officer, this wandering
14 line at the ocean water, low and high tide, ordinary high
15 tide, if that is the line -- why the State of California
16 spent at least a thousand dollars and probably more hiring
17 an engineer, going to all the trouble of surveying the line
18 and marking it with stakes, appearing in court with language
19 that I think is so clear I see no way of misinterpreting it?
20 Why do that, all that, if it is always to be the ordinary
21 high water mark? The language is clear, the result is clear,
22 and I hope you gentlemen before this is authorized would give
23 very serious consideration as to whether or not you are keep-
24 ing faith with the predecessors in this Commission and the
25 Kents and the title company and the property owners.

26 I have here a brief summary of the facts which I

1 have given you, which I would like to file with each one of
 2 you. If you would be interested in reading it at any length
 3 beyond this time, it also discusses the legal ramifications.
 4 The Attorney General's office and your Executive Officer has
 5 a copy.

6 I haven't talked about the law. I am convinced as
 7 a lawyer that we will establish, if this goes to court, the
 8 rightness and justness of this position, but I don't think
 9 you as a Commission should ever put us to that expense and
 10 to that test because I believe you have committed yourself
 11 and I believe your word is at stake.

12 MR. CRANSTON: Does that complete your statement?

13 MR. McCARTHY: Yes, it does.

14 MR. CARR: I'd like to see your map, please.
 15 Where is the State park?

16 MR. McCARTHY: (Indicating on map) The State park
 17 is over here and north is this way; and this is the sandspit
 18 over here.

19 MR. CARR: These are the metes and bounds?

20 MR. McCARTHY: This is the ocean side.

21 MR. CARR: And the stakes were put in here?

22 MR. McCARTHY: That's right.

23 MR. CARR: Which is the ocean side?

24 MR. McCARTHY: This is on the ocean.

25 MR. CARR: Now this is the ordinary high water
 26 mark, is that right?

1 MR. McCARTHY: That is as it was at the time it
2 was surveyed.

3 MR. CARR: How much has it changed?

4 MR. McCARTHY: Well, you can see how it has changed
5 on this picture because that is the stake. That is the end
6 of this line.

7 MR. CARR: Where is the high water mark? According
8 to this, it might be clear up to here?

9 MR. McCARTHY: I think at this stage, when these
10 were taken, I think you would say the high water mark would
11 be here. In the winter, of course, you get storms.

12 (Throughout discussion Mr. McCarthy demonstrated
13 to Commission members and much of conversation
14 scarcely audible to reporter)

14 MR. CARR: Now, what is their contention?

15 MR. McCARTHY: According to this survey and the
16 decree of quiet title, they were given title right down to
17 this fence. That was the high water mark when the survey was
18 made. In other words, the high water mark has moved. That
19 is the problem.

20 MR. CARR: What does the Attorney General say about
21 the law of accretion?

22 MR. HORTIG: If I may, Mr. Chairman, in answering
23 Mr. Carr this is exactly the total problem in that it's a
24 question of understanding what the court decree meant when it
25 fixed a line in accordance with the survey as Mr. McCarthy
26 has outlined it.

1 I would like to state for the record that with
2 respect to the factual recitation, we concur completely with
3 Mr. McCarthy. The problem is the conclusion; and because
4 there was a question and division of opinion, the Division
5 asked for and received on March 11, 1959 an opinion from the
6 office of the Attorney General, from which I will only read
7 the conclusion:

8 "Our conclusion may be summarized as follows:

9 The decree quieting title in the Kent Estate Co.
10 operated to fix the Pacific Ocean boundary of
11 their sandspit property as being along the
12 ordinary high water mark. This boundary is and
13 continues to be a fluctuating one, going landward
14 with natural erosion and waterward with natural
15 accretion. In view of your indication that the
16 erosion of the sandspit along the Pacific Ocean
17 side is due to the natural and gradual action of
18 the ocean waters, the present boundary of the
19 sandspit property would be along the ordinary
20 high water mark as it now exists and the fence
21 erected by the Kent Estate Co. blocking public
22 access to the tidelands which are between the
23 present ordinary high water mark and the line of
24 mean low tide is an encroachment upon State owned
25 property and should be removed."

18 As a result of this opinion, we met with repre-
19 sentatives of the Kent Estate Company, including Mr. McCarthy.
20 Mr. McCarthy submitted to the staff and to the office of the
21 Attorney General a legal brief, another copy of which he has
22 just delivered to you gentlemen, under date of February 15,
23 1960, in which Mr. McCarthy concludes subsequent to the
24 Attorney General's first opinion:

25 "We believe that the law of California, under the
26 facts of this case, leads to only one conclusion.
The boundary between the State and the Kents

1 "along the ocean is permanently fixed along
2 metes and bounds, courses and distances, set
3 by the State surveyor."

4 On receipt of this brief, we asked the Attorney
5 General to review this brief and the data contained therein
6 and on March 22, 1960 the office of the Attorney General
7 reported:

8 "After re-examining the factual background and
9 the applicable law, including a legal analysis
10 dated February 15, 1960 by the law firm of
11 Freitas, Allen, McCarthy & Bettini, we readopt
12 the conclusion reached in our informal opinion
13 of March 11, 1959, namely, that the decree
14 quieting title in the Kent Estate Company oper-
15 ated to fix the Pacific Ocean boundary of its
16 sandspit property along the ordinary high
17 watermark as it fluctuates naturally from time
18 to time."

19 These are the statements to the staff and to the Commission
20 from the office of the Attorney General. As you have heard
21 in reading the two, in the one from Mr. McCarthy we have
22 diametrically opposite opinions as to the state of the law
23 in this case.

24 The staff recognizes that we are engineers and not
25 attorneys and we are relying for legal advice on our counsel,
26 the office of the Attorney General.

27 I note that there are no notes in the recommenda-
28 tion, as Mr. McCarthy referred to, that the staff be author-
29 ized to take action to compel removal of this fence on its
30 own motion. The only recommendation is that if there is a
31 legal action undertaken by Marin County in which the question
32 is raised as to the State's title to tide and submerged lands,

1 that then and in that event the Attorney General be author-
2 ized to protect the State's title to its tidelands if such
3 should be questioned -- which patently is a fundamental
4 responsibility of the Lands Commission and the Attorney
5 General to do.

6 MR. CARR: Mr. Chairman, I'd like to ask a couple
7 more questions. One of them is this: You have, I believe,
8 a plat there of the lots that have been sold?

9 MR. McCARTHY: Yes, I do.

10 MR. CARR: Actually, how much are these property
11 owners affected by this fluctuating high water mark?

12 MR. McCARTHY: Well, they would be affected to the
13 extent they lose a portion of their land.

14 MR. CARR: Well, how much?

15 MR. McCARTHY: That would depend exactly on where
16 the high water mark would be in comparison. I would say --
17 this is a guess from the pictures and my observations on the
18 beach -- I would say possibly fifty to a hundred feet with
19 an average of sixty feet, so it is about three to five
20 thousand lost. It might be as much as a fourth or third of
21 these lots.

22 MR. CARR: What is the depth of these lots?

23 MR. McCARTHY: The depth is 434 feet -- about
24 that many feet -- 440, 430, 428.

25 MR. CARR: And of these hundred lots that have been
26 sold, how many have been built on?

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MR. McCARTHY: I would say there are at least fifty to sixty houses and they average about twenty-five to forty thousand.

MR. CARR: And is there any peril from the ocean at the present time?

MR. McCARTHY: No, there is no peril.

MR. CARR: What did the title company guarantee?

MR. McCARTHY: When I am stating what a title company guarantees I often have my doubts, because it is sometimes not very clear. From my observation of this policy, they guarantee that plan. There are no objections. This is the title policy. There are no reservations and that's the property described in the policy. My interpretation, in answer to your direct question, is they guarantee the whole lot because of the fact they did not make an exception.

MR. CARR: Factually, do you think it was the intent of a previous Commission that the Pacific Ocean wouldn't fluctuate in its ordinary high water mark?

MR. McCARTHY: Not that it wouldn't move; but in reading the correspondence of the two executive officers I cannot reach any conclusion but that it was their intent to commit, establish a permanent line. I understand they can commit themselves to a permanent line. All the Attorney General says is they didn't do it in this case because there is a magic word left out or not inserted. I say your two

1 officers in the correspondence I read, as clearly as I have
2 seen anything stated, they are setting a positive line. It
3 is the clearest language I have ever read.

4 MR. CARR: I'd like to hear from the Attorney
5 General's office what is the magic word.

6 MR. JOSEPH: I know nothing about this except what
7 I have heard this morning. The difference -- Mr. Hortig says
8 the judgment defined a mean high line which shifts landward
9 or seaward; Mr. McCarthy says it is a definite line. I don't
10 see how Mr. McCarthy's clients can be hurt if it is settled
11 by a court action, if it should arise in this particular case.
12 It is entirely a question of what was settled in this quiet
13 title action and if a mean high tide line was settled that
14 shifts, if in fact that has shifted the title has been
15 affected.

16 MR. CARR: It looks to me like a real adroit beach
17 buggy navigating can still go around the rails and enjoy
18 private property. Actually, what is happening here? Are
19 the beach buggies still going down the beach?

20 MR. MCCARTHY: No. This stopped this.

21 MR. CARR: What is the main objection of the
22 property owners?

23 MR. MCCARTHY: To get the property.

24 MR. JOSEPH: There is a plea of Mr. McCarthy that
25 this means a certain thing and there may be a tendency in
26 future if this Commission falls in with Mr. McCarthy's

1 arguments, that action here has acquiesced with this, a
2 fixed line forever after today will become a fixed line.

3 MR. McCARTHY: I think you have done that already,
4 that a fixed line has been set, and in my opinion you are
5 trying to change what has been done before. My statement to
6 you and my request to you is that you have done it. Without
7 any doubt, this correspondence, the whole survey, everything
8 up to this decree shows you did. Now there is a change of
9 heart, if your Executive Officer is asking you to take a
10 changed position. You have to read the correspondence which
11 I have left with you, if in my presentation you have not
12 fully understood. It is sometimes hard when someone else
13 is reading it to get the full meaning. We feel it is open
14 and shut in this correspondence what the State is doing and
15 feel you have done it, and you are asking to change. I ask
16 you, before you reaffirm a change, to consider the facts
17 which I have brought to you in this correspondence.

18 To me - - the statement of the Attorney General's
19 office here is "How will we be hurt?" We will be hurt and
20 Kent's integrity as subdividers has been hurt in the land
21 they sold, and they intend to sell further land. Their
22 property owners are going to be hurt. Fourth, the title
23 company is going to be hurt. There is lots of hurt, lots
24 of damage.

25 As to your Executive Officer's statement that I
26 might have misinterpreted what the request is, I say this:

1 If his only request is in case this action is filed on the
 2 title of the land -- where the State's land is and the Kent's
 3 land is -- and you should take a position one way or the
 4 other, I would agree to that; but what I am saying is take
 5 the position I believe is where you are -- that this land
 6 is not State land; up to this line the Kents own it. And
 7 that is why I am here before you because I believe the Com-
 8 mission should make that de ision. Do you believe after
 9 looking at this picture that your previous representatives
 10 committed the State and where did they commit it, and if they
 11 did are you going to stand up to it?

12 MR. CARR: This is a very involved question, Mr.
 13 Chairman, and as I see this recommendation it simply says - -
 14 It might be well to read it:

15 "It is recommended that the Commission authorize
 16 the Executive Officer to request the office of
 17 the Attorney General to take whatever legal action
 18 is necessary to reconfirm the boundary line be-
 19 tween State-owned tidelands and the Kent Estate
 20 on the ocean side of the Bolinas Sandspit at the
 21 ordinary high water mark if such action is nec-
 22 essary as the result of the legal proceedings
 23 proposed by the District Attorney of Marin
 24 County to have the William Kent Estate Co. remove
 25 that portion of the fence erected waterward of
 26 the present ordinary high water mark."

22 How does that possibly damage the title company, the owners,
 23 or the Kent Estate? If, in the case of the proceedings by
 24 the District Attorney to have the William Kent Estate remove
 25 a portion of the fence, what would you expect the State of
 26 California to do?

1 MR. McCARTHY: I expect the State of California
 2 to, first, live up to whatever agreement it made. If you
 3 conclude that the agreement that the State of California
 4 made was that this was a fixed boundary line, then I expect
 5 you, the State of California, to say "Yes, we did agree that
 6 was a boundary line and that's where we believe it is."

7 You might say -- I can see what's in your mind
 8 and it is a good question. You are saying that all this
 9 request is to reconfirm what this is. What you haven't
 10 seen and maybe what you are not aware of, is a letter written
 11 by the Executive Officer of this Commission, which states in
 12 effect that line is not fixed; it is wherever the high water
 13 mark is -- and the Executive Officer has made that clear
 14 today.

15 MR. GARR: If you go back to determine the intent
 16 of a previous Commission, it is like trying to interpret the
 17 intent of the Legislature, any previous Legislature. I
 18 believe the intent was to establish the fact that the boundary
 19 line was the high water mark; as I read the correspondence,
 20 to determine what the high water mark was at that time. Are
 21 we saying a previous Lands Commission said irrevocably "We
 22 are establishing the high water mark in the future" or are
 23 we saying "This is the high water mark at this time." I
 24 think that's a possible interpretation.

25 MR. McCARTHY: That's a possible interpretation,
 26 but you make agreements -- you agreed on the part of the
 State of California.

1 MR. CARR: Yes, but what did they agree to? I am
 2 not sure they agreed this was to be the permanent boundary
 3 line of the lots come what will. What would you say if by
 4 natural accretion the land took in the whole territory and
 5 the Kent Company and the landowners got another hundred feet?

6 MR. McCARTHY: In my opinion the Kent Company
 7 could not claim it. Everything we have done is consistent
 8 with this line. If it moves out, the State is fine, the
 9 beach buggies are fine. Your question is just the point.
 10 What did the State Lands Commission agree to? I maintain
 11 if you read this correspondence that you can come to no
 12 other conclusion. That's all I am asking you to do.

13 MR. CARR: Mr. Chairman, I move we examine the
 14 correspondence and take this under consideration at the
 15 next meeting. I would like to examine this correspondence...

16 MR. McCARTHY: That's all I am asking.

17 MR. CARR: ... and confer with the Attorney General
 18 and see what cooks.

19 GOV. ANDERSON: In other words, defer the recommenda-
 20 tion of the Executive Officer to another meeting, until we
 21 have a chance to look at the correspondence.

22 MR. HORTIG: Certainly the staff has no objection.
 23 May I say all of the correspondence pro and con, all of the
 24 opinions referred to by Mr. McCarthy, were all contained in
 25 the material which was reviewed by the office of the Attorney
 26 General in submitting the two reports that were submitted to

1 the State Lands Commission. Consequently, I summarize this
2 very simply to the basic problem again -- that we have two
3 astute opinions as to what the file says happened.

4 GOV. ANDERSON: Is there any reason why we couldn't
5 defer this for a meeting or two while we have a chance to
6 look at these communications?

7 MR. HORTIG: No sir.

8 GOV. ANDERSON: It won't jeopardize anybody's
9 position?

10 MR. HORTIG: No sir.

11 MR. CARR: Is it your thinking, Mr. McCarthy, that
12 the D. A. of Marin County is going to bring an action to
13 have these railroad rails pulled up?

14 MR. McCARTHY: The answer is "yes."

15 MR. CARR: When?

16 MR. McCARTHY: Just let me digress a second. We
17 have mentioned correspondence at this meeting with your
18 Executive Officer. I want you to understand, whatever I have
19 evidenced in feeling today.....

20 MR. CARR: We will stipulate that nobody's mad
21 except the beach buggy drivers.

22 MR. McCARTHY: we have had complete hearings
23 and full consideration.

24 GOV. ANDERSON: I will second the motion.

25 MR. CRANSTON: A motion has been moved and seconded.
26 Is there any further discussion? (No response) If not, it

1 is approved unanimously.

2 MR. McCARTHY: Would we be notified when the next
3 meeting will be, so we can appear at the meeting?

4 MR. CRANSTON: Yes. Next item will be mineral
5 extraction leases: Item (a), Foster, T. Jack....

6 MR. HORTIG: Mr. Chairman, may I suggest forbear-
7 ance on the part of the representatives of Mr. Foster T. Jack?
8 Representatives of the next three lease applications --
9 Granite Construction, Pacific Cement & Aggregates, and Sea-
10 side Sand & Gravel Co., which are straightforward bids for
11 leases -- have travel commitments and if these items could
12 be heard at this time it would be of help to them.

13 MR. CRANSTON: With no objection we will proceed
14 to item (b).

15 MR. HORTIG: Items (b), (c) and (d), Mr. Chairman,
16 are proposed leases for mineral extraction -- three separate
17 bidders for three separate areas. The high bidders are
18 proposing to pay a royalty of six cents per cubic yard, and
19 the Department of Natural Resources on behalf of Beaches
20 and Parks has reviewed the application for proposed operation
21 and reported that these operations could not be detrimental
22 to the adjoining shoreline recreational activities -- a
23 report which is required by statute.

24 Additionally, in the recommendation that the
25 leases be issued to the high bidders, it is proposed -- in
26 view of the fact that there have been operations conducted

in previous years, although the physical location is not certain nor whether any of the sand previously removed actually in fact was removed from seaward of the high water mark and to what extent -- that in connection with issuing the leases, it would be proposed that the bidders submit a written acknowledgment that the issuance of any lease was not to be construed as a waiver of any claim or cause of action the State may have on past trespass, which will be evaluated after the lease is issued; and the office of the Attorney General, in reviewing the lease offer for form, has suggested that there be submitted a supplemental financial statement by the bidder -- which in substantive content is the same as the one previously submitted, but in this case certified, which the previous ones were not.

GOV. ANDERSON: I move approval.

MR. CARR: Mr. Chairman, I'd like to ask -- there is no maximum specified as to how much sand can be removed?

MR. HORTIG: That is correct, sir. Actually, the majority of the operations conducted by these people previously have been on their own privately owned uplands. The maximum that can be removed from the offshore area is usually limited somewhat by nature. First, if it isn't replenished in front of their own upland, it won't be there to remove. It can only be removed at certain stages of the tide, and there are times that are known as winter months when you

1 don't operate on the tidelands very effectively, either.

2 MR. CARR: And that has been determined by Natural
3 Resources -- there is no limit to the amount of sand that
4 can be removed without injuring the beach?

5 MR. HORTIG: On the adjoining beaches. The persons
6 requiring these leases are the owners of the adjoining up-
7 lands. The report of the Department of Natural Resources
8 was to the effect, as required by law, whether these opera-
9 tions might affect adversely recreational activity on any
10 other areas which are currently available for beach opera-
11 tions; and the waiver was received from the Department in
12 connection with each of these three bid proposals here
13 considered.

14 MR. CARR: Is this area where it is proposed to
15 take the sand subject to the standard phenomenon that takes
16 place in Monterey Bay, that in certain seasons the sand
17 washes up; other seasons it washes back again?

18 MR. HORTIG: Yes sir.

19 MR. CARR: I wonder if there shouldn't be --
20 What facilities do we have -- You say there is a reserved
21 cause of action against the lessees against damage, is it?
22 What would that be -- a cease and desist order to take the
23 sand or what would you do?

24 MR. HORTIG: A cease and desist order as to pos-
25 sible damage on adjoining properties if any indications of
26 any such potentiality did exist in fact. The Department of

1 Natural Resources' review indicates that this could not and
2 would not be, regardless of the extent and nature of the
3 operation within the areas proposed to be leased; and,
4 patently, the operations will be restricted to those areas
5 included in the leases offered and no others.

6 MR. CRANSTON: Any further questions?

7 MR. CARR: No.

8 MR. CRANSTON: It has been moved that item (b),
9 Granite Construction Company; item (c), Pacific Cement &
10 Aggregates, Inc., and item (d), Seaside Sand & Gravel Co.
11 be approved for the issuance of mineral extraction leases.
12 Is there anyone who wishes to be heard further on this
13 matter? (No response) If not, the three items are
14 unanimously approved and we return to item (a), Jack Foster.
15 Do you have any comment on this one, Frank?

16 MR. HORTIG: Yes sir. The Commission will recall
17 extensive testimony at the time authorization was sought to
18 offer San Bruno Shoals in San Mateo County for possible
19 mineral extraction leases, for the extraction of fill material
20 which was proposed as a possible fill to construct an island
21 to be known as Brewer's Island, also Foster City, and various
22 names. At that time the City and County of San Francisco
23 asked for a deferment of time to decide whether they would
24 wish to bid, likewise Oakland -- which was granted. Time
25 ran and there were no proposals from the people who asked
26 for the deferment. Consequently, there were calls for bid.

1 One bid was received and this is the bid of T. Jack Foster
 2 of San Mateo, California, offering a royalty of five cents
 3 per cubic yard on all material removed, plus an increment of
 4 one-half the market value in excess of thirty cents per
 5 cubic yard for all sand removed in the future.

6 Inasmuch as the engineer's estimate for the project
 7 estimates a total of fifteen million to twenty million cubic
 8 yards of material will be removed, the potential royalty in-
 9 come from this operation should be substantial.

10 The Department of Natural Resources again, as
 11 required by law, with respect to recreational activities has
 12 reported that from an examination of the application for the
 13 proposed operations there is no possible interference with
 14 the recreational use of the lands littoral to the tide and
 15 submerged lands involved.

16 However, the Division of Small Craft Harbors,
 17 agreeing in general with the use of dredged material for fill
 18 purposes, suggested a conference of interested agencies be
 19 held for the purpose of agreeing on the control of future
 20 operations in the Bay area. This is an opportunity for the
 21 Small Craft Harbors to come forth in connection with the
 22 issuance of this lease, although in substance the requirements
 23 and suggestions of the Division of Small Craft Harbors are
 24 of the same general tenor that had been proposed by a repre-
 25 sentative of the San Mateo Planning Council, East Bay Planning
 26 Commission, and other organizations -- that for some future

1 complete project for the entire development of San Francisco
 2 Bay it would be nice to have this fill material around to
 3 devote to such a project if and when necessary; as against
 4 which the Commission must decide the public desirability of
 5 issuing a lease which would produce by its operation an
 6 additional tax base for San Mateo County and which operation
 7 has been regarded with favor by the San Mateo Board of Super-
 8 visors; and at the same time also produce substantial revenue
 9 to the State Lands Fund.

10 I believe Mr. Dunham of Small Craft Harbors is
 11 present at the moment. The Chief was in the room earlier.
 12 I presume either or both will wish to report to the Commis-
 13 sion on this item before there is action on the staff recom-
 14 mendation that the mineral extraction lease for San Bruno
 15 Shoals be issued to the high bidder, Mr. T. Jack Foster.

16 MR. CRANSTON: Does anyone wish to be heard at this
 17 time?

18 MR. DUNHAM: My name is James Dunham, Division
 19 Engineer, Division of Small Craft Harbors. Actually, to
 20 this type of use of the land we have no objection. As a
 21 matter of fact, this is the type of use that we propose that
 22 the lands of the Bay be put to -- the submerged lands. We
 23 feel very strongly that eventually the answer to the problems
 24 of both navigation and the buildup of the surrounding area
 25 is the establishment of bulkhead lines around the Bay and the
 26 filling of the land behind these bulkheads with material

1 dredged from the Bay to navigable depths. This will remove
 2 the vast areas of presently unusable tidelands -- mud flats
 3 that give all sorts of trouble at the present time, both from
 4 the standpoint of navigation and odors, problems of disposal
 5 of waste materials. I could go on enumerating any number of
 6 problems with which most of you are familiar.

7 Unfortunately, the planning of this whole south Bay
 8 area has not proceeded with sufficient rapidity to judge these
 9 factors as they come up now for your consideration. It
 10 would be much easier to make a decision on this if you had
 11 the final answers now. There are agencies that are planning
 12 but the trouble is their funds are short, they can only go
 13 so far with it, and there are a few dedicated people looking
 14 to the future with the hopes that they can present a plan
 15 that will be accepted before it is too late.

16 Now, I understand - - I have not had a chance to
 17 review the work that has been done by various agencies in
 18 determining the areas where good material lies and where only
 19 poor material is available -- but I understand that it is
 20 quite limited. The vast bulk of the Bay muds are rather un-
 21 usable for fill material except in the base course. It is
 22 possible to pump this material into areas where it can
 23 settle, where it can be given time to consolidate, and then
 24 top it out with the good materials of the Bay.

25 As we stated to you in a previous letter, this is
 26 the sort of thing they have done in Mission Bay at San Diego,

1 with the result that the good materials of the Bay were
 2 budgeted for use in topping out the poor fill material, so
 3 it would provide a good crust on which to build and develop
 4 for the future.

5 This is all we are asking your Commission to do
 6 now -- is to consider these possibilities: whether or not
 7 the good material should be used for construction aggregates,
 8 which is the next item on your agenda here, and with your
 9 permission would it be acceptable to talk on that just a
 10 moment?

11 MR. CRANSTON: Yes, I wish you would.

12 MR. DUNHAM: Here we see a very large amount of
 13 good sand of the Bay is to be used for construction aggre-
 14 gates. Now, such sand is available from many other places
 15 and here again we haven't made sufficient studies to know.
 16 We do know this -- that the maximum economical pumping dis-
 17 tance for large scale operations is perhaps five or six miles.
 18 This is what it was, I know, about six or eight years ago.
 19 With heavier construction equipment, larger dredges, it may
 20 be possible to pump even further and it may be possible that
 21 these areas of the Bay that do have good sand, sandy material,
 22 are within reaching distance -- within good pumping distance
 23 of the surrounding area.

24 Now, it would be most unfortunate if all of this
 25 good material were sold off for this purpose and when you
 26 came to filling the lands surrounding the Bay for the ultimate

1 development you had to go elsewhere to get it at a much
 2 higher cost. You are speaking here in terms of four to six
 3 cents per cubic yard. The cost of obtaining fill material
 4 trucked in from dry land sources to use in topping out would
 5 amount to well over a dollar a yard and this would make many
 6 projects completely infeasible -- might destroy the eventual
 7 development of this or at least postpone it for a great many
 8 years.

9 I have a copy of a letter here that I received
 10 from the Planning Director of Alameda County, who has been
 11 very dedicated in his efforts to secure planning for the
 12 South Bay Council. He has organized the three-county
 13 council for the South Bay area and has assisted with the
 14 nine-county entire Bay area council on this. He states that
 15 he is familiar with the position of both Mr. DeWitt Nelson
 16 of the Department of Natural Resources and Mr. James Dunham
 17 of the Division of Small Craft Harbors and "I support their
 18 position fully. Long range planning and proper allocation
 19 of fill deposits can materially benefit the development of
 20 the Bay shoreline and protective policies can be established."

21 Unfortunately, I am in no position to make recom-
 22 mendations as to specific action to be taken in this matter.
 23 In our last letter to the State Lands Division we have sug-
 24 gested that perhaps a meeting should be held to see if some-
 25 thing could be done to push this planning along and come up
 26 with a workable plan that could be used. All I can do now

1 is leave it to you gentlemen to determine whether this sort
 2 of thing should start right now with the turning down of the
 3 request in Item 8 or whether we will wait until the next
 4 time and start it then. If there are any questions con-
 5 cerning this

6 MR. CRANSTON: What is your feeling about Item 7,
 7 7(a) -- the item re Jack Foster -- in relation to what you
 8 are saying?

9 MR. DUNHAM: I would say it is in the nature of
 10 the type of plan of use of material we would approve.

11 MR. CARR: What kind of material is it under this
 12 1,263 acres? Is that sedimentary mud or what is it?

13 MR. DUNHAM: I have discussed this with Mr. Nichols
 14 of the firm of Dames and Moore, who have done quite a bit
 15 of work. I understand he is here today. Perhaps he could
 16 explain that better than I.

17 MR. NICHOLS: My name is Charles Nichols represent-
 18 ing T. Jack Foster, Civil Engineer. The material, I believe.....

19 MR. CRANSTON: Could we have about a three-minute
 20 recess? Mr. Anderson has to leave and we would like a brief
 21 conference up here. Frank, would you join us up here?

22 (RECESS 10:42-10:50 A. M.)

23 MR. CRANSTON: Lieutenant Governor Anderson has
 24 had to depart to some other duties and his new Administrative
 25 Assistant -- or perhaps that is not the right title.....

26 MR. HORTIG: Executive Secretary.

1 MR. GRANSTON: Don Rose. I'd like to introduce
2 him and he will come up and sit with us here and participate
3 as a member of the Commission.

4 (Mr. Nichols came forward)

5 MR. GRANSTON: Would you again identify yourself?

6 MR. NICHOLS: I am Charles Nichols with the firm
7 of Dames and Moore, civil engineers representing T. Jack
8 Foster, the applicant for the lease. I think I have only a
9 couple of words to say about this unless further explanation
10 is required. I have spoken with Mr. Dunham. I believe that
11 our plans for use of this material is in agreement with the
12 Division of Small Craft Harbors' desires as expressed by Mr.
13 Dunham. The material that we plan to extract from the Bay
14 is not commercially usable material and, therefore, it is
15 only suitable for this purpose of filling a larger area.
16 It is for the purpose of constructing a new integrated city
17 of about three thousand acres. I would be glad to leave
18 with the Commission a copy of the planners' report, which
19 illustrates the type of thing that is going to be done, if
20 you would like; and if there are any further questions I
21 would be glad to answer them.

22 MR. GRANSTON: Is this to be entirely a development
23 of a residential city?

24 MR. NICHOLS: Integrated industrial and residential.

25 MR. CARR: Is this part of the area where you have
26 industry and residential above and below?

1 MR. NICHOLS: It is further down right at San Mateo
2 and between Bayshore Highway and the Bay on this tidelands
3 area at the end of the San Mateo Bridge. If you would like,
4 I will give you this.

5 MR. CARR: If Mr. Dunham agrees that this particu-
6 lar project here doesn't jeopardize the use of material for
7 a more economic purpose, this seems to be pretty high
8 economic purpose.

9 MR. DUNHAM: Yes, I would agree this is exactly the
10 purpose the material should be used for.

11 MR. CARR: I move the approval.

12 MR. CRANSTON: I will second the motion. Do you
13 have plans for further recreational and other development?

14 MR. NICHOLS: Yes, we have plans for both interior
15 and exterior.

16 MR. CARR: Mr. Chairman, I do think there is an
17 urgency about getting some plan around the Bay.

18 MR. CRANSTON: I would like to state my impression.
19 I would also like to ask if the Department of Public Works
20 is still present here. (No response) I guess nobody is.
21 (Mr. Hess came forward)
22 I would like to ask you one question after making a remark.
23 It is my feeling that it is very important that we do have a
24 master plan developed as rapidly as possible there and the
25 Lands Commission, representing a broader area than any one
26 city or county, should do everything to move that forward
and we should do all we can to see that materials are given

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the highest and best use and that we don't siphon off material before a master plan is made so it will be far more costly to bring about.

It appears to me the Foster plan would be in general along the lines of what the master plan would involve and I don't think we should oppose it at this time. However, I do think the item in Item 8 is of a different character and I think before we have gone so far that it is difficult to bring it to a halt, that it might be done as you did with regard to land sales -- that we take a vacation from approving any further use of materials from the bottom of the Bay until we explore the possibilities of a master plan for full development of that area. Perhaps by such action we could move it faster.

I would like to ask the gentleman from Public Works if this would be in general conformity with the viewpoints of your department?

MR. HESS: I don't know that we have any objection to it, although I am not familiar with this particular question.

MR. HORTIG: We can answer specifically that this project has been reviewed heretofore by Division of Highways and in view of the base areas that it would develop and provide for the freeway system it is a project that is viewed with favor by Division of Highways.

MR. CRANSTON: Is there any further discussion on the Foster item? (No response) If not, it is approved by

1 the Commission, with Mr. Carr and Mr. Cranston moving
2 affirmatively.

3 We now move to Item 8 -- Southampton Shoal,
4 mineral extraction lease offer. Is there anyone to speak
5 on this matter.

6 MR. HORTIG: Well, this, Mr. Chairman, is the
7 item on which Mr. Dunham expressed himself as having reserva-
8 tions. We do have, as with the previous item, notice of
9 consideration -- the fact that a notice of consideration
10 has been sent to the Director of Natural Resources. In this
11 case, again, the Department found that the operation could
12 not affect the recreational use of the land littoral but
13 brought to our attention -- and, as a matter of fact, this
14 item was deferred for consideration until this Sacramento
15 meeting so that Small Craft Harbors could make a presenta-
16 tion with respect to the operation, that Mr. Dunham has
17 already made.

18 The complications, of course, in part stem from
19 the fact, as Mr. Dunham indicated, that there is no current
20 concrete plan and specific recommendations for better utili-
21 zation of the material are not available -- although they
22 are certainly being thought about. Additionally, in this
23 particular instance, Southampton Shoal by its very name
24 gives a very substantial clue. If some of this operation
25 isn't conducted and sand removed, being in an area which is
26 generally used for navigation in San Francisco Bay -- the

1 U. S. Army Corps of Engineers in San Francisco have informed
2 us that they look at this operation with favor because this
3 will eliminate or minimize the necessity of their spending
4 Federal funds to dredge the navigation channel by having the
5 material removed in this manner.

6 So you are betwixt and between. On the other hand,
7 if all this material was in places where it wasn't a navi-
8 gation hazard, there is simply no doubt, even as there is
9 a continuing acceleration in our land values, that probably
10 for construction materials there will be a similar accelera-
11 tion, as well as a better ultimate plan for the disposition.

12 On this matter of the general planning and trying
13 to coordinate these projects, I think the fact that the
14 State Lands Division has been interested in this and have
15 been participating when there have been things to be dis-
16 cussed is evidenced by the fact that Mr. Dunham is here
17 this morning, in order to try on an interagency basis at
18 least to get the best possible use out of these operations.

19 I therefore suggest for consideration by the
20 Chairman and the Commission whether there should be a reason-
21 able going forward rather than an absolute vacation on addi-
22 tional sand and gravel extraction leases in San Francisco
23 Bay, with the assignment to the staff of the responsibility
24 to maintain current knowledge with respect to studies and
25 data, if any, as they are generated and as they are of
26 potential practical application to areas that the Commission

1 is considering offering for lease.

2 A complicating factor to putting an absolute stop
 3 comes to mind. There are several of these shoal areas in
 4 San Francisco Bay on which there are long-term agreements
 5 already, not being utilized currently but which might come
 6 at any time -- on which the Commission has agreed, in
 7 accordance with law, to make them available to the Division
 8 of Highways for highway construction purposes and Highways
 9 can use these materials for construction material. It just
 10 means their construction costs less money. So all of it
 11 belongs in a long-range program, but query: Whether the
 12 Commission would care to take, as the Chairman said, a vaca-
 13 tion from leasing in San Francisco Bay until that happy day
 14 when there is something approaching a master plan, or
 15 whether each operation should be scrutinized on its own
 16 merits and either set aside or permitted to proceed because
 17 of the extenuating circumstances which I suggested.

18 The desirability in any event of dredging shoal
 19 areas for navigation, the fact that it is available to High-
 20 ways for highway construction purposes also, would seem to
 21 indicate that this particular application for Southampton
 22 Shoals might not clearly fall into the category of one that
 23 should be reserved -- and by reserving could cause other
 24 applications.

25 MR. CARR: Do you know what the conditions are on
 26 Southampton Shoal? What is the depth of the shoal in low

1 water and how much does it interfere with navigation right
2 now?

3 MR. HORTIG: Well, actually, of course, this
4 constitutes a shoal area on the channel approaching the
5 Richmond Bridge for any traffic intending to go up to the
6 Carquinez Straits and Sacramento and San Joaquin Rivers,
7 and there are some indicated areas here -- and I trust
8 these depths are in feet (sometimes they are in fathoms) --
9 in feet, we have a 16-foot line, a 15-foot line, and 21
10 feet and 23 and a 20-foot line. So in open navigation --
11 and this adjoins immediately the existing channel which is
12 maintained and dredged by the U. S. Army Corps of Engineers
13 to an attempted depth to hold up to 40 feet -- dredging
14 operations under this proposed lease would widen that channel
15 and would also remove material which is currently sloughing
16 into the channel.

17 This is only, I might point out, an extension of
18 an existing lease approved by the Commission, and the exten-
19 sion of the new lease is about one-third of the total area
20 already under contract to be dredged.

21 MR. CRANSTON: I would like to ask that this go
22 over to the next meeting, to give me time to familiarize my-
23 self with this general situation; and I certainly don't
24 suggest any prolonged vacation at this time, but would like
25 to ask this go over to the next meeting.

26 MR. HORTIG: Mr. Chairman, may I note for the

1 record that we have also just received today a copy of the
2 letter from Mr. Robert L. Williams, County Director of the
3 County Planning Commission, to which Mr. Dunham made refer-
4 ence previously

5 MR. CARR: Which county?

6 MR. HORTIG ... I am sorry, Alameda; and a telephone
7 call from City Attorney O'Drain of the City of Richmond,
8 requesting deferment of action on this subject item and a
9 consideration of feasibility of obtaining some of the sand
10 for city development.

11 MR. CARR: I second the motion.

12 MR. CRANSTON: The matter is deferred to the next
13 meeting.

14 Item 9 - Proposed oil and gas lease offers, Santa
15 Barbara County -- authorization for Executive Officer to
16 conduct public review in Santa Barbara County.

17 MR. CARR: I move that he be authorized to conduct
18 a public review.

19 MR. CRANSTON: Well, I second the motion, with the
20 understanding that members of the Lands Commission may parti-
21 cipate in that hearing if it works out properly for that
22 purpose.

23 MR. HORTIG: It is axiomatic that the Commission
24 members are welcome.

25 MR. CARR: I move that we grant ourselves permission
26 to do this.

1 MR. CRANSTON: Number 10 -- approval of maps entitled
2 "Flat of the Grant to the County of Marin," dated September
3 1959-January 1960. Frank?

4 MR. HORTIG: By Statutes of 1959, certain tide and
5 submerged lands in Richardson Bay and adjoining, within the
6 city limits of Belvedere, were granted to the County of Marin.
7 The statutes require and it has now become standard that the
8 Commission shall, at the cost of the grantee, survey, monu-
9 ment and record the area of State lands acquired. The survey
10 has been completed by the State Lands Division and it is
11 recommended that the Executive Officer be authorized to
12 approve and have recorded these survey sheets.

13 MR. CARR: So move.

14 MR. CRANSTON: Moved and seconded, so ordered.

15 Item 12 -- Salary schedule for Executive Officer.

16 MR. HORTIG: I am sorry, sir, you skipped one.

17 MR. CRANSTON: Item 11 -- Authority for Executive
18 Officer to approve and execute the agreement for compromise
19 of claim and stipulation for judgment in the settlement of
20 City of Oakland quiet title action.

21 MR. HORTIG: By reconstruction of various and
22 sundry grants in the City of Oakland, it is determined that
23 there is a possible cloud on one-half acre of land that the
24 City of Oakland owns. This may have been ungranted tide and
25 submerged land of the State. However, in order to solve the
26 problem of the cloud, in order to permit the City to proceed

1 with the development of the land, procedures were developed
 2 through the office of the Attorney General -- and particularly
 3 by Attorney General Joseph sitting behind me -- for a form of
 4 agreement for compromising the claim and stipulation for
 5 judgment, with the City paying \$499; and on the entry of the
 6 stipulated judgment, the City will finally have free and
 7 clear title and all the proper legal requirements with respect
 8 to disposal of State lands and elimination of the claim will
 9 be met.

10 It is recommended that we execute

11 MR. CRANSTON: Moved and seconded that the staff
 12 recommendation be authorized and it is so ordered.

13 Item 12 -- Salary schedule for Executive Officer.

14 MR. HORTIG: The Commission will recall at the
 15 meeting of June 23rd a resolution was adopted declaring the
 16 Executive Officer's salary open for adjustment as of July 1.
 17 The Department of Finance has issued an exempt pay memorandum
 18 indicating salary range revised for Executive Officer, State
 19 Lands Commission, to range from 1155 to 1405, which conforms
 20 to like adjustments made for civil service classes.

21 Additionally, the Personnel Board -- and I assume
 22 with the approval of the Department of Finance -- have indi-
 23 cated that steps in these ranges, inasmuch as they do not
 24 reflect full five percent, may be adjusted upward as of
 25 January 1 or as of the employee's anniversary date after his
 26 last adjustment. Therefore, it is recommended that the

1 Commission consider:

2 (1) Fixing the salary of the Executive Officer at
3 the maximum of the range as set by the Department of Finance
4 and (2) authorize the Executive Officer to effectuate any
5 Commission action in this matter, including acceptance of
6 any of the subsequent range adjustments that the State Person-
7 nel Board may order.

8 MR. GRANSTON: Mr. Carr, this is in your department.

9 MR. CARR: I move the recommendation.

10 MR. GRANSTON: I second it. If there is no further
11 discussion, it is so ordered.

12 Item 13 -- Confirmation of transactions consummated
13 by the Executive Officer.

14 MR. HORTIG: The items appearing in the tabulation
15 on page 40 of your calendar are two standard actions relating
16 to extension of a geological exploration survey permit and
17 the issuance of a grazing lease, in accordance with the
18 established policies of the Commission. They are presented
19 for confirmation in order to ascertain and be certain that
20 the full requirements of the statutes relative to actions by
21 resolution of the Commission be complied with.

22 MR. CARR: Mr. Hortig, would you please go into a
23 little more detail on this item?

24 MR. HORTIG: Which item is this, Mr. Carr?

25 MR. CARR: Number 13.

26 MR. HORTIG: Item 13 - Confirmation of transactions...

1 MR. CARR: M-mhm-mhm.

2 MR. HORTIG: By delegation of authority from the
3 State Lands Commission, the Executive Officer is authorized
4 to complete certain types of transactions -- issuances of
5 leases other than oil, gas and mineral leases, in accordance
6 with standard forms and at standard rates as prescribed by
7 the Commission; approval of assignments; and other situations
8 which are particularly prescribed both in the statutes and
9 within the rules and regulations and written policies of the
10 State Lands Commission. These actions are carried on in
11 this manner so that there can be effective documentation
12 issued between Commission meetings and not have to withhold
13 all and sundry routine for specific individual action by the
14 Lands Commission.

15 However, in the opinion of the office of the Attorney
16 General, to be certain that there can never be a contest sub-
17 sequent and particularly in areas where land titles might be
18 involved, in view of the requirement of the Public Resources
19 Code that all actions by the State Lands Commission shall be
20 on motion and vote of the State Lands Commission, these items
21 (which have already been completed under delegation of author-
22 ity) in order to be insured that they have the full approval
23 required, required full approval of the Lands Commission as
24 specified by statute, are brought back at the end of the
25 month to the Lands Commission for confirmation of action.

26 MR. CARR: What are these two actions?

1 MR. HORTIG: As you will see from the tabulation,
 2 one was an extension of an existing geological survey permit
 3 which had been previously authorized by the State Lands Com-
 4 mission, extending the term for operation. That was the
 5 first item -- Order Number 3563 to Monterey Oil Company.

6 The second was the issuance of a grazing lease to
 7 Diaz Brothers for one year for \$112 per year.

8 MR. CARR: The first is an exploration -- geological
 9 survey permit?

10 MR. HORTIG: That's correct. Original permit was
 11 authorized by resolution of the Commission to run to May
 12 the 15th, 1960. May 15, 1960 there was no State Lands Com-
 13 mission meeting. Under delegation of authority, I issued
 14 the extension.

15 MR. CARR: What about number two -- where is this
 16 land located?

17 MR. HORTIG: Lassen County.

18 MR. CARR: This is for one year?

19 MR. HORTIG: On 2,240 acres, on which the appraised
 20 grazing capacity and appraised grazing value was appraised
 21 at \$112.

22 MR. CARR: How many head of cattle can you run for
 23 this \$112?

24 MR. HORTIG: Not too many -- the carrying capacity
 25 is low.

26 MR. SMITH: Well, it's suitable for grazing for not

1 more than two months out of the entire year.

2 MR. CARR: I move the approval.

3 MR. CRANSTON: Second the motion, and it is so
4 ordered.

5 Item 14 we have already covered.

6 Item 15 -- Report on status of major litigation.

7 MR. HORTIG: On which there are, as the Commission-
8 ers will note, no dynamic changes since the last report, so
9 this report is submitted to the Commissioners for their
10 information and file.

11 The Commi. ers have just received a supplemental
12 calendar item, copy of it, Mr. Chairman

13 MR. CRANSTON: We will proceed with the supple-
14 mental item and will you please explain it?

15 MR. HORTIG: Yes, I wish we could, but perhaps
16 a reading of the facts to keep them in chronological order --
17 We find ourselves in the situation that the Lands Commission
18 is faced with the necessity of taking immediate action for
19 the removal of a derrick barge beached offshore from Hunting-
20 ton Beach State Park at Huntington Beach.

21 The chronological order of the occurrences that
22 bring us to the position we are in are that on June 24, 1960
23 during the course of performing a salvage operation, a salvage
24 barch known as the "Donohugh Power Derrick Barge" and belong-
25 ing to Captain W. N. Bill Donohugh broke its anchorage and
26 washed ashore on the tidelands fronting the shore of Huntington

1 Beach State Park. In so doing, the hull of the vessel was
 2 broken -- in the parlance, the vessel broke its back. There-
 3 after, on June 29, 1960, Donohugh directed a letter to the
 4 Corps of Engineers, in which he detailed the manner in which
 5 it was lost. The letter pointed out that the barge was
 6 properly and securely anchored prior to its breaking loose;
 7 that high winds and unusual wave action caused the barge to
 8 break from its mooring; that thereafter he endeavored to re=
 9 move it seaward and finding its back broken concluded
 10 removal attempts would present a new menace to navigation;
 11 and after consultation with the Coast Guard it was decided
 12 to leave the barge at its location and leave its disposition
 13 to the Corps of Engineers.

14 The Corps of Engineers have disavowed any interest
 15 in removing the barge since it is not in a navigable channel.

16 Although the barge is beached on Huntington Beach
 17 State Park, it is beached on tide and submerged lands and
 18 this is technically outside their jurisdiction.

19 As a result of our own staff counsel's investigation,
 20 it was concluded it was as a result of an act of God and not
 21 as an act of negligence of the owner and, therefore, under
 22 Federal law the owner is under no legal liability to remove
 23 it after he has abandoned it.

24 The tide and submerged lands on which the vessel
 25 is beached are under the general control of the Lands Commis-
 26 sion, as provided in the Public Resources Code. Additionally,

1 this matter falls under the Commission's jurisdiction as a
 2 result of 1959 statutory enactments relating to salvage
 3 operations over and upon the ungranted tide and submerged
 4 lands of the State -- although it must be admitted that the
 5 Legislative Committee at the time of this enactment were
 6 considering salvage values to have possible profit, not
 7 costs attached thereto.

8 While some responsibility for the removal might be
 9 attributed to the City of Huntington Beach under the Harbors
 10 and Navigation Code, since the vessel lies within an area
 11 annexed by the City, the Code is permissive and not mandatory --
 12 hence the City cannot be forced to take action if it does not
 13 so desire and we can add from an informal conference with the
 14 City Attorney they do not so desire.

15 The Attorney General's office has advised that
 16 action to force the City, or attempt to force the City, to
 17 remove the barge would result in a dispute and does not
 18 appear advisable due to the urgency of removal.

19 In its present location just offshore of the State
 20 Park, the barge is a menace to public health and safety. In
 21 a letter of July 13, 1960, A. D. Philbrook, District Super-
 22 intendent of Beaches and Parks requested its removal for the
 23 reason that -- and this has been verified by inspection of
 24 the Lands Division, -- the lifeguards and other personnel are
 25 unsuccessfully attempting to warn visitors away from this
 26 attractive hazard.

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MR. CARR: Have they a sign up?

MR. HORTIG: There are police on it; there are signs; and the lifeguards do nothing but run from one end to the other to keep people from getting into trouble.

It is imperative that this be remedied as soon as possible. Telephone call on July 27th, yesterday, from the State Park indicates that within the last three or four days two persons were seriously lacerated, stitches had to be taken, as a result of having been washed into the barge by rip tides. These resulted by people who swam out and swam in to the barge to keep away from the lifeguards, and entered the area. Salvage bids indicate that the remaining value of any salvage will be scrap or junk not to exceed \$500.

MR. CARR: Is this a wood or steel barge?

MR. HORTIG: It is a wooden barge. There is machinery aboard, a winch, a thoroughly soaked gasoline engine, steel derrick boom, and so forth. Rough estimates from the same sources also indicate the cost of removal should not exceed \$7,000. Bids released provide for compensation to the successful bidder for the value of all salvage in connection with the removal of the barge, plus blank dollars, which would be the bidders' cost for services over and above the salvage value.

In view of the foregoing and the urgency of this matter, it is recommended that the Executive Officer be

1 authorized to enter into a contract providing for removal of
 2 the barge now lying abandoned, the contract providing for
 3 services as has already been outlined; and it is further
 4 recommended that the Executive Officer be authorized to submit
 5 a request for deficiency authorization against State Lands
 6 Act Fund to the Department of Finance to defray the cost of
 7 this work, since the State Lands Division budget for this
 8 year made no provision for emergency costs.

9 I would add, in view of the necessary fast drafting
 10 of this calendar item, also the office of the Attorney General
 11 would be requested to ascertain whether there were any
 12 responsibilities still remaining with the original owner of
 13 the barge and/or others from whom at least partial collection
 14 might be made.

15 MR. CARR: Whose legal opinion is this?

16 MR. HORTIG: Combination of staff counsel and the
 17 office of the Attorney General.

18 MR. CARR: Is this actually a menace to health --
 19 the barnacles and things that accumulate on a jetty?

20 MR. HORTIG: Strictly, no; but being within the
 21 Huntington State Beach Park area to which admission is
 22 charged and having a very attractive device, namely a block
 23 with a hook on it swinging in the surf, you can really get
 24 a wild ride by getting out there if you can beat the life-
 25 guards to it.

26 MR. CARR: Can't they get the block out of the surf?

1 MR. BORTIG: The way it is hanging there now,
2 there is no way to pull the thing up.

3 MR. CARR: I move we sell it to the Monterey Oil
4 Company in place. Do you want to buy it, Mr. Fyles? You
5 are an expert witness here. What would you do with it?

6 MR. FYLES: Mr. Carr, I had a suggestion while
7 Frank was explaining this. Since the Signal Oil and Gas
8 are operating across from this, it might be right and proper
9 for Signal to remove the barge. Mr. Ottoson, their counsel,
10 is present here.

11 MR. CARR: I suggest that you shake for it and see
12 which one gets it.

13 MR. OTTOSON: You win.

14 MR. CARR: Who was the barge serving at the time
15 it broke away? What were they doing?

16 MR. BORTIG: They brought it down to recover a
17 taxi boat that had sunk. They had raised the taxi boat and
18 instead of going back to their home port of Long Beach or
19 San Pedro they were informed by the owner of the taxi boat
20 that they wanted it taken to Newport. So they took the tug
21 to take the taxi boat down to Newport and got half way to
22 Newport, and when the wind and swirl came up it broke the
23 anchorage. The Coast Guard and the patrol captain, or
24 whatever his title is in charge of Huntington Beach State
25 Park, said they stood there and watched the thing coming.
26 As a matter of fact, it came so fast originally they thought

1 it was self-propelled, and it must have taken a tremendous
2 surge to move it at the speed it was moving. The Coast Guard
3 attempted the following morning to pull it off the beach and
4 were unable to do so.

5 MR. CARR: It seems this is an act of God and then
6 it is between the Lands Commission and God as to who is
7 responsible.

8 IR. HORTIG: I think in this case there won't be
9 much problem as to where the responsibility lies, but how
10 are we going to get it out of there.

11 MR. CARR: Is the hull actually broken in two?

12 MR. HORTIG: Yes.

13 MR. CARR: It is separated?

14 MR. HORTIG: It would separate on any attempt to
15 tow it out and it's buried and burying itself further in the
16 sand. It will take a clamshell to free it from the suction.
17 This is probably the largest single operation -- to get it
18 loose. It can be pulled piecemeal over the State beach and
19 over the road without any effort, but is going to take equip-
20 ment to do it.

21 MR. CARR: Well, what do you say? I guess we
22 authorize it, but I think we certainly ought to look further
23 into the situation as to whether the owner of this barge has
24 any responsibility. After all, I don't remember that there
25 was anything so peculiar on that date. Was there a big
26 storm down there at that time?

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MR. HORTIG: We were surprised, and we can reverily, but we did ask the same specific question. Both the Coast Guard representatives and Beaches and Parks said there was abnormal sea action on that date. We did not realize it inland.

MR. CRANSTON: I second the motion and without objection it is so ordered.

We return now to the final item of the Redrock Marina case. Do we wish to take that up at this time, Mr. Carr, or what is your desire?

MR. CARR: Who negotiated this deal with the Redrock Marina?

MR. HORTIG: Our commercial-recreational leasing section, Mr. Carr, but may I point out that the field for negotiation in this instance was extremely limited, and that actually it was a question of mechanical processing and adding to it a small area of unoccupied tide and submerged land only, because the pier areas colored in brown are the subject of long-term leases issued previously by the State Lands Commission to the Department of Public Works and in those specific contracts it was provided that the Department of Public Works could assign with the approval of the State Lands Commission.

So the question was solely one in public interest of whether it would be more desirable to have Public Works relieved from paying the annual rental and, in addition,

1 having a commercial development established on tide and
2 submerged lands, as against the converse reasons -- and I
3 can't think of one at the moment, as to why Public Works
4 should be required to hold this lease if, as a matter of
5 their departmental administration, they no longer desire to
6 do so.

7 MR. CARR: Mr. Chairman, I am still confused as to
8 who are the parties of interest that are leasing. Are we
9 just being asked to approve the lease of some water or are
10 we asked to approve this whole deal? What is the authority?
11 Could you delineate for us the authority of the Lands
12 Commission?

13 MR. HORTIG: Yes sir. It breaks in two parts.
14 There are leases in all the areas shaded in brown before you
15 which have many years to run and which provide in their
16 original terms that they may be assigned by the Department
17 of Public Works to an assignee, their choice of an assignee,
18 but with the approval of the Lands Commission.

19 MR. CARR: Are they assigning at the same rate
20 Public Works is paying?

21 MR. HESS: Yes sir.

22 MR. CARR: We ought to get Louis ----- on Department
23 of Public Works. He never assigns anything at the same price
24 he pays.

25 MR. HESS: The main thing in this is to put these
26 properties back into use that we no longer have use for in

1 our system.

2 MR. CARR: Doesn't the Department of Public Works
3 recognize price raises, inflation?

4 MR. HESS: In all of our transactions this is true.
5 We consider market value on the property to be conveyed. In
6 this particular case, you will note the date on that pros-
7 pectus you have. We have a pier. We inherited all of this
8 from the Richmond-San Rafael Ferry operation. It has a very
9 limited use and in our four years of attempting to dispose
10 of this property we have been unable to find customers.

11 Now, this has some bearing on the market value
12 because, unable to find customers, we can't find a market to
13 determine a value. We have gone into this particular trans-
14 action, that is the conveying of these leases, transmitting
15 them to the present people before you, in good faith in an
16 attempt to put this back into private enterprise and to
17 reduce our obligations as to continuing of the leases on
18 this and also as to our responsibility for the maintenance
19 of a pier that has no use in its present form for other than
20 things outside the jurisdiction of Highways.

21 MR. CARR: I have nothing but admiration for the
22 proposed lessee, but I think he is getting a good piece of
23 property and certainly we are in favor of private people
24 getting these things on the tax rolls. The lease has no
25 value but the improvements will have.

26 MR. KETTENHOFFEN: Over a period of time around

1 \$200,000. The City of Richmond turned it down as being
2 unfeasible. I am willing to take a chance.

3 MR. CARR: Are you the main party?

4 MR. KETTENHOFFEN: Yes sir. The main problem
5 that this has been turned down is the surf and heavy tidal
6 action. I think I have a way to lick it. City of Richmond
7 turned it down.

8 MR. CARR: That's the reason that private enter-
9 prise gets more done than the bureaucracies do -- because
10 they can see the possibilities; and, unfortunately, the
11 governmental people can only see the liabilities.

12 MR. KETTENHOFFEN: That's true, but

13 MR. CARR: I am just complimenting you. The
14 thing I want to know -- Does title to this strip 100 x 600
15 feet go along with it or not?

16 MR. KETTENHOFFEN: Yes sir, but this is not con-
17 cerned here.

18 MR. CARR: I know. This is the Department of
19 Finance talking.

20 MR. HESS: Yes. These are our holdings.

21 MR. CARR: You are talking about throwing this
22 piece of property 100 feet frontage by 600 feet depth just as
23 a sort of

24 MR. FARROW: That is not 100-foot frontage. I
25 don't know how the piece of property developed in that shape.
26 That is just a long strip of land sitting out in the water,

1 under thirty feet of water.

2 MR. CARR: This is entirely submerged, is that it?

3 MR. HESS: Yes.

4 MR. FARRON: Yes, entirely submerged. How the
5 Richmond-San Rafael Ferry Company happened to own it, we
6 don't know.

7 MR. CARR: Has this ever been appraised? Actually
8 we are thinking of buying land under thirty feet of Salton
9 Sea How soon would you be improving this property?

10 MR. KETTENHOFFEN: We have been waiting to start
11 two months.

12 MR. CARR: All right. I approve.

13 MR. CRANSTON: Your motion has to be to reconsider
14 previous action and approve. I second the motion. Without
15 objection, it is so ordered.

16 Finally, time and place of next meeting -- and I
17 believe we have agreed the next meeting will be in Los
18 Angeles, nine o'clock Thursday, August 25th. Without obje-
19 tion that will be the next meeting.

20 Is there any further business?

21 (No response)

22
23 ADJOURNED 11:43 A.M.

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CERTIFICATE OF REPORTER

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I, LOUISE H. LILLICO, reporter for the Division of Administrative Procedure, hereby certify that the foregoing seventy-five pages contain a full, true and correct transcript of the shorthand notes taken by me in the meeting of the STATE LANDS COMMISSION held at Sacramento, California on July 28, 1960.

Dated at Sacramento, California, August 12, 1960.

Louise H. Lillico

Louise H. Lillico